

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON
MEDFORD DIVISION

**BLUE MOUNTAINS
BIODIVERSITY PROJECT,**

Plaintiff,

1:22-cv-01500-CL

v.

ORDER

HOMER WILKES, *et al.*,

Defendants.

AIKEN, District Judge.

This case comes before the Court on a Findings and Recommendation (“F&R”) filed by Magistrate Judge Mark Clarke. ECF No. 38. Judge Clarke recommends that Defendants’ Motion to Dismiss, ECF No. 24, should be denied.

Under the Federal Magistrates Act, the Court may “accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge.” 28 U.S.C. § 636(b)(1). If a party files objections to a magistrate judge’s findings and recommendations, “the court shall make a *de novo* determination of those portions of the report or specified proposed findings or recommendations to which objection is made.” *Id.*; Fed. R. Civ. P. 72(b)(3).

For those portions of a magistrate judge’s findings and recommendations to which neither party has objected, the Act does not prescribe any standard of review. *See Thomas v. Arn*, 474 U.S. 140, 152 (1985) (“There is no indication that Congress,

in enacting [the Act], intended to require a district judge to review a magistrate's report to which no objections are filed."). Although no review is required in the absence of objections, the Magistrates Act "does not preclude further review by the district judge[] *sua sponte* . . . under a *de novo* or any other standard." *Id.* at 154. The Advisory Committee Notes to Fed. R. Civ. P. 72(b) recommend that "[w]hen no timely objection is filed," the court should review the recommendation for "clear error on the face of the record."

In this case, Defendants have filed Objections, ECF No. 40. Plaintiff has filed a Response to Defendants' Objections, ECF No. 41. The Court has reviewed the F&R, the Objections, Responses, and the entire record and finds no error. The Findings and Recommendation, ECF No. 38, is therefore ADOPTED.

As explained in the F&R, Plaintiff has plausibly alleged a violation of 36 C.F.R. § 219.51(b) and (d) and 5 U.S.C. §§ 706(2)(A) & (D) in asserting that the Under Secretary's signature on a decision notice does not exempt a lower ranking official's proposed plan amendment from the objection process. Accordingly, Defendants' Motion to Dismiss, is DENIED.

It is so ORDERED and DATED this 29th day of March 2024.

/s/Ann Aiken
ANN AIKEN
United States District Judge